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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/690,007
Filing Date: October 17, 2000
Appellant(s): MORRIS ET AL.

Jeremy J. Monaldo
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/01/08 appealing from the Office action mailed 06/04/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,108,637	Blumenau	8/22/2000
6,119,098	Guyot et al.	9/12/2000

6,128,651

Cezar

10/3/2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28, 55-57 and 64-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,108,637 issued to Blumenau in view of U.S. Patent Number 6,119,098 issued to Guyot et al. (Guyot), and further in view of US Patent 6,128,651 issued to Cezar.

As per claim 1,55, Blumenau disclosed a method of presenting advertising to viewers in a computer network environment, the method comprising: monitoring a viewer's interactions with an associated computer system; and determining an amount of time to be used in later displaying advertisements on the viewer's associated computer system based on the viewer's monitored interactions (Title, Abstract, column 7 lines 58-65, column 13 lines 51-58, column 14 lines 7-19).

Blumenau taught the invention substantially as claimed, however, Blumenau did not expressly teach a method based on the determined amount of time, varying an amount of display time for which a later displayed advertisement is to be displayed on

the viewer's associated computer system and storing click-through information for the advertisements; and sending the click-through information to a host computer.

Blumenau suggested exploration of art and/or provided a reason to modify the method of presenting advertisement to include additional features such as varying an amount of display time for which a later displayed advertisement is to be displayed on the viewer's associated computer system based upon review and analysis of monitoring information (column 18 lines 38-56, column 19 lines 2-11, column 20 lines 23-36).

Guyot discloses a method for targeting and distributing advertisement having steps of downloading advertisements and set of tuning parameters to a user's computer, wherein the set of parameters are configured to cause a display of a first advertisement on the user's computer (abstract), monitoring the viewer's interaction on the viewer's associated computer and based on the determined interaction information, schedule the display timing of advertisements on the viewer's computer for the later advertisement to be displayed (column 2 lines 9-20, column 5 lines 6-18) and storing click-through information for the advertisements (Guyot, column 3 lines 55-65, column 4 lines 16-23); and sending the click-through information to a host computer (Guyot, column 4 lines 16-23, column 6 lines 51-63).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the advertisement method of Blumenau with the teachings of Guyot to include a step of adjusting timing in order to effectively present the advertisement to users (column 7 lines 19-47) since when the user is

performing other activities on the computer, the probability of viewing an advertisement is relatively low (Guyot, column 1 lines 34-43).

One of ordinary skilled in the art would have been motivated because to effectively present the advertisement to users (Guyot, column 7 lines 19-47)

However, the combination of Blumenau and Guyot does not expressly teach the process of varying an amount of display time (duration or length of advertisement display time).

Cezar expressly teaches the use of precise timed advertisement and further teaches individual timers for each advertisement (col.2, lines 20-59, col.3, lines 25-36, 45-47, col.4, lines 45-52).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the advertisement method of combined method of Blumenau and Guyot with the teachings of Cezar in order to include a step of varying the length/duration of the later advertisement based on viewer's interaction in order to effectively present the advertisement to viewers (Blumenau, column 7 lines 19-47).

One of ordinary skilled in the art would have been motivated because it would have enable a system for precise controlled advertising to a web page(Cezar, col.2, lines 20-33).

Blumenau in view of Guyot in further view of Cezar does not explicitly teach the varied amount of display time being different than an amount of display time for which the later displayed advertisement is to be displayed on another viewer's associated

computer system. The Office interprets this limitation as, varying a display time for different users, e.g. the first user's advertisement is displayed for 30 seconds while a second user's advertisement is displayed for a minute. Customization of advertisements for different users.

Blumenau, col.18, lines 33-45, does teach monitoring information regarding display of content, which is later reviewed and analyzed to enable conclusions to be drawn about how the content was displayed and possibly, to enable deductions to be made about how the content was observed. In addition, **monitoring information can be used to affect the display of a set of content.** One way in which this can occur is for a set of content, or the manner in which the set of content is displayed, **to be modified based upon review and analysis of monitoring information obtained from previous displays of the set of content.**

Guyot, Abstract, col.3, lines 55-65, col.5, lines 5-20, teaches advertisements are specifically targeted to the subscribers based on a personal profile provide by the subscriber. Further teaches monitoring user's interactions in order to display advertisement.

Cezar, col.2, lines 20-59, col.3, lines 25-36, 45-47, col.4, lines 45-52, teaches precise timed advertisement.

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Blumenau in view of Guyot in further view of Cezar to customize an advertisement, e.g. how long an advertisement is shown, for a particular user in order tailor content to be displayed to a user.

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Blumenau, Guyot, Cezar, and customizing advertisements in order to tailor content to be displayed to a user based on user preferences and/or actions.

As per claim 2, the combination of Blumenau and Guyot discloses the process of adjusting an ad expiration tuning parameter configured to-set the quantity of time for which an advertisement is available for display (Guyot, column 2 lines 9-13, column 4 lines 34-43, column 7 lines 1-6). Motivation to combine set forth in claim 1.

As per claim 3, the combination of Blumenau and Guyot discloses the process of adjusting a maximum display count configured to set a maximum number of times to display an advertisement to a user viewing a batch of ads (Guyot, column 2 lines 9-13, column 4 lines 34-43, column 7 lines 1-6). Motivation to combine set forth in claim 1.

As per claim 4, the combination of Blumenau and Guyot discloses the process of varying the amount of display time for which the later displayed advertisement is displayed comprises adjusting a minimum display time configured to set a minimum amount of time to display the later displayed advertisement before another advertisement is displayed (Guyot, column 2 lines 9-13, column 4 lines 34-67; Cezar, col.2, lines 20-59, col.3, lines25-36,45-47, col.4, lines 45-52). Motivation to combine set forth in claim 1.

As per claim 5, the combination of Blumenau and Guyot discloses the process of adjusting an idle delay configured to cause a delay from the time a user has gone idle

before a first advertisement is replaced with another advertisement (Guyot, column 5 lines 6-17, column 7 lines 49-56). Motivation to combine set forth in claim 1.

As per claim 6, the combination of Blumenau and Guyot discloses the process of adjusting an active delay configured to cause a delay from the time a user goes active before displaying another advertisement (Guyot, column 5 lines 6- 17, column 7 lines 49-56). Motivation to combine set forth in claim 1.

As per claim 7, the combination of Blumenau and Guyot discloses the process of comprising adjusting an idle (no spin) parameter configured to stop the display of a first advertisement from being replaced with the display of another advertisement after a user goes idle (Guyot, column 5 lines 6- 17, column 7 lines 49-67, Cezar, col.4, lines 45-52). Motivation to combine set forth in claim 1.

As per claim 8, the combination of Blumenau and Guyot discloses the process wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a use of a computer mouse (Guyot, Abstract, column 2 lines 9-21, column 5 lines 6-18, Cezar, col.4, lines 45-52). Motivation to combine set forth in claim 1.

As per claim 9, the combination of Blumenau and Guyot discloses the process wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a use of a computer keyboard (Guyot, Abstract, column 2 lines 9-21, column 5 lines 6-18). Motivation to combine set forth in claim 1.

As per claim 10, the combination of Blumenau and Guyot discloses the process wherein monitoring a viewer's interactions with an associated computer system

comprises monitoring the activity of any input devices connected to the subscriber system [an auditory signal such as the viewer's voice provided through a microphone] (Guyot, column 7 lines 63-67, column 8 lines 1-1-4). Motivation to combine set forth in claim 1.

As per claim 11, the combination of Blumenau and Guyot discloses the process wherein the auditory signal is the viewer's voice (Guyot, column 7 lines 63-67, column 8 lines 1-1-4). Motivation to combine set forth in claim 1.

As per claim 12, the combination of Blumenau and Guyot discloses the process wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a maximization and a minimization status of a screen displaying advertising (Guyot, column 2 lines 19-13, column 5 lines 6-11, lines 45-61). Motivation to combine set forth in claim 1.

As per claim 13, Blumenau discloses the process wherein monitoring a viewers interactions with an associated computer system comprises monitoring a viewers use of a device that sends an input, or causes an input to be sent, to the associated computer system (Blumenau, column 17 lines 24-35).

As per claim 14, the combination of Blumenau and Guyot discloses the process wherein the timing of displayed advertisements on a screen displaying advertising is configured to not switch between advertisements if the screen displaying advertisements is minimized or occluded (Guyot, column 5 lines 6-11, lines 45-61, column 12 lines 46-56). Motivation to combine set forth in claim 1.

As per claim 56, Blumenau discloses the process further comprising varying the tuning parameters downloaded to the users computer; and utilizing a correlation technique to determine a correlation between the tuning parameters downloaded to the user's computer and the click-through rate of the user (Blumenau, column 14 lines 7-19, column 16 lines 13-38, column 17 lines 24-35, column 18 lines 38-56).

As per claim 57, Blumenau discloses the process further comprising setting another set of tuning parameters based on the correlation between the tuning parameters and the user's click-through rate (Blumenau, column 16 lines 13-38, column 17 lines 24-35, column 18 lines 38-56).

As per claim 64, Blumenau discloses the process wherein monitoring wherein monitoring the viewer's interactions with the associated computer system includes continually monitoring, during operation of the associated computer system, the viewer's interactions with the associated computer program (Blumenau, column 10 line 65-column 14, column 11 lines 18-29, column 16 lines 13-24).

As per claim 65, Blumenau discloses the process wherein monitoring the viewer's interactions with the associated computer system includes monitoring the viewer's interactions with the associated computer system that are unrelated to a manual adjustment of the timing of the displayed advertisements (Blumenau, column 17 lines 24-35, column 18 lines 38-49, column 20 lines 23-36).

As per claim 66, the combination of Blumenau and Guyot discloses the process wherein adjusting the timing of the later displayed advertisements includes varying lengths of time during which the advertisements are displayed on an advertisements -

by- advertisements basis (Guyot, Title, column 2 lines 9-20, column 5 lines 6-18).

Motivation to combine set forth in claim 1.

As per claim 70, the combination of Blumenau and Guyot discloses the process wherein the tuning parameters are configured to vary lengths of time during which the advertisements are displayed on an advertisement-by-advertisement basis (Guyot, Title, column 2 lines 9-20, column 5 lines 6-18, Cezar, (fig. 5, fig. 6, col. 2 L14-41, col. 7 L15-51, col. 9 L7-67). Motivation to combine set forth in claim 1.

As per claim 71,73, the combination of Blumenau, Guyot and Cezar discloses the process wherein monitoring a viewer's interactions comprises monitoring a viewer's interactions other than interactions indicating an amount of display time for which a later displayed advertisement is to be displayed on the viewer's associated computer system (Cezar, col.2, lines 20-59, col.3, lines25-36,45-47, col.4, lines 45-52). Motivation to combine set forth in claim 1.

As per claim 72, 74, the combination of Blumenau, Guyot and Cezar discloses monitoring a viewer's interactions comprises monitoring a viewer's interactions with an application operating on the viewer's associated computer system, the application being other than an application for indicating an amount of display time for which a later displayed advertisement is to be displayed on the viewer's associated computer system (Cezar, col.2, lines 20-59, col.3, lines 25-36, 45-47, col.4, lines 45-52). Motivation to combine set forth in claim 1.

As per claims 15-28 and 67-69, 75, do not teach or further define over the limitations in claims 1-14 and 64-66. Therefore claims 15-28 and 67-69, 75 are rejected for the same reasons set forth above.

(10) Response to Argument

The applicant argues in substance,

a) As per claims 1, 15, 55, 75, Blumenau in view of Guyot in further view of Cezar does not teach, "varying an amount of display time for which a later displayed advertisement is to be displayed on a viewer's associated computer system based on an amount of time determined based on the viewer's monitored interactions with the viewer's associated computer system",

b) As per claims 1, 15, 55, 75, Blumenau in view of Guyot in further view of Cezar does not teach, "the varied amount of display time being different than an amount of display time for which the later displayed advertisement is to be displayed on another viewer's associated computer system",

In reply to a and b); MPEP 2143 states, The Supreme Court in KSR International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in Graham. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. Exemplary rationales that may support a

conclusion of obviousness include: (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

In the present case, the combination of Blumenau in view of Guyot in further view of Cezar is obvious to one of ordinary skilled in the art because Blumenau suggested exploration of art and/or provided a reason to modify the method of presenting advertisement to include additional features such as varying an amount of display time for which a later displayed advertisement is to be displayed on the viewer's associated computer system based upon review and analysis of monitoring information (column 19 lines 2-11, column 20 lines 23-36). Blumenau, col.16, lines 60-67, teaches monitoring the change in time of a characteristic of the content display.

Furthermore, Blumenau, col.18, lines 33-45, does teach monitoring information regarding display of content, which is later reviewed and analyzed to enable conclusions to be drawn about how the content was displayed and possibly, to enable deductions to be made about how the content was observed. In addition, **monitoring information can be used to affect the display of a set of content.** One way in which this can occur is for a set of content, or the manner in which the set of content is displayed, **to be modified based upon review and analysis of monitoring information obtained from previous displays of the set of content.**

Guyot, Abstract, col.3, lines 55-65, col.5, lines 5-20, teaches advertisements are specifically targeted to the subscribers based on a personal profile provide by the subscriber and further teaches monitoring user's interactions in order to display

advertisement, e.g. monitors the activity of any input device which includes keyboard or mouse.

Cezar, col.2, lines 20-59, col.3, lines 25-36, 45-47, teaches precise timed advertisement. Further, Cezar, col.4, lines 45-52, recites "The general system operation can include alteration of the number of times that ad content is displayed, the classification of ad content, the time of day of display of ad content, and **virtually any desired parameter which an advertiser would prefer to control**". It would have been obvious to one ordinary skill in the art at the time of the invention to consider one of a "desired parameter" as the timer since Cezar's teaches the use of timers for advertisements.

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Blumenau in view of Guyot in further view of Cezar to customize an advertisement, e.g. how long an advertisement is shown, for a particular user in order tailor content to be displayed to a user.

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Blumenau, Guyot, Cezar, and customizing advertisements in order to tailor content to be displayed to a user based on user preferences and/or actions.

c) As per claims 5,19, Blumenau in view of Guyot in further view of Cezar does not teach, "adjusting an idle delay configured to cause a delay from the time a user has gone idle before a first advertisement is replaced with another advertisement",

d) As per claims 6,20, Blumenau in view of Guyot in further view of Cezar does not teach, "adjusting an active delay configured to cause a delay from the time a user goes active before displaying another advertisement",

In reply to c and d); Guyot, col.5, lines 6-17, col.7, lines 49-56, teaches that when the user has gone idle from no interaction, a specific advertisement is displayed. Inherently there is a delay when an advertisement is changed from one advertisement to another because changing from one advertisement to another advertisement can never be instantaneous.

Further, Cezar, col.4, lines 45-52, recites "The general system operation can include alteration of the number of times that ad content is displayed, the classification of ad content, the time of day of display of ad content, and **virtually any desired parameter which an advertiser would prefer to control**". Blumenau, col.16, lines 60-67, teaches monitoring the change in time of a characteristic of the content display. It would have been obvious to one ordinary skill in the art to include adjusting a delay as a "desired parameter" in order to tailor content to be displayed to a user based on user preferences and/or actions.

e) As per claims 7,21, Blumenau in view of Guyot in further view of Cezar does not teach, "adjusting an idle parameter configured to stop the display of a first advertisement from being replaced with the display of another advertisement after a user goes idle",

In reply to e); The Office interprets, "adjusting an idle parameter configured to stop the display of a first advertisement from being replaced with the display of another

advertisement after a user goes idle", as displaying only one advertisement when a user goes idle.

Guyot, col.5, lines 6-17, col.7, lines 49-56, teaches that when the user has gone idle from no interaction, a specific advertisement is displayed. Only one advertisement is being displayed during the screen save mode therefore, an advertisement is not replaced with another advertisement.

f) As per claim 56, Blumenau in view of Guyot in further view of Cezar does not teach, "varying tuning parameters downloaded to a user's computer, and utilizing a correlation technique to determine a correlation between the tuning parameters downloaded to the user's computer and a click-through rate of the user".

In reply to f); Blumenau, col.16, lines 14-38, lines 60-67, teaches event monitoring as an example, determining the number of times that an on-screen pointer enters a defined area and the change in time of a characteristic of the content display. Further, col.18, lines 33-45, does teach monitoring information regarding display of content, which is later reviewed and analyzed to enable conclusions to be drawn about how the content was displayed and possibly, to enable deductions to be made about how the content was observed. In addition, **monitoring information can be used to affect the display of a set of content.** One way in which this can occur is for a set of content, or the manner in which the set of content is displayed, **to be modified based upon review and analysis of monitoring information obtained from previous displays of the set of content.**

Blumenau makes the suggestion that based on the review and analysis of monitoring information(e.g. events or click-through rate) from previous display how to display later contents, e.g. varying tuning parameters.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Backhean Tiv/

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